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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,400	03/10/2004	Errette Bevins III	PGI6044P1171US	5594

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/797,400

Applicant(s)

BEVINS ET AL.

Examiner

Sam Chuan C. Yao

Art Unit

1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-09-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: a process of making a nonwoven laminated fabric comprising three filamentary web layers;

Species B: a process of making a nonwoven laminated fabric comprising two filamentary web layers.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Geimer on 09-26-05 a provisional election was made without traverse to prosecute the invention of Species A, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim 7 is indefinite, because the limitation "*said polyethylene precursor web*" does not have a positive antecedent basis.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Storey et al (US 4,784,892) in view of Willey et al (US 5,766,737), Boe et al (US 4,082,878), Mallen et al (US 5,288,544) and Fujiwara et al (US 5,951,535).

With respect to claims 1-3, 5 and 8, Storey et al, drawn to a continuous in-line process of making an absorbent laminated nonwoven web, discloses forming a 1st melt-blown fibrous covering web, forming a melt-blown fibrous core web, forming a 2nd melt-blown fibrous covering web; heat-pressing (using a pair of embossing rolls) the three webs to consolidated the webs; wherein different materials such as polyester, nylon, polyethylene, polypropylene, etc. can be used for the 1st and 2nd covering webs, while the core web uses a material which is different from at least one of the covering webs, wherein a polypropylene can be used for the core web (col. 1 lines 5-8; col. 2 lines 12-30; col. 3 lines 22-34; figures 1-2).

The process taught by Storey et al differs from claims 1-3, 5 and 8, in that, Storey et al does not teach forming continuous filaments in forming the three fibrous

webs layers. However, it would have been obvious in the art to replace the melt-blown fibers with spun-bond filaments fibers in forming web layers in a process suggested by Storey et al, because: a) it is a common practice in the art to form continuously a laminated fibrous web by forming spun-bond filamentary webs in-situ as exemplified in the teachings of Willey et al (figure 2); b) it is a common practice in the art to interchangeably use staple fibers and (filaments or long fibers) in forming absorbent articles as exemplified in the teachings of either Boe et al (col. 1 lines 8-13); c) Mallen also discloses using either synthetic continuous or staple fibers in making a highly absorbent article, and further teaches that, *"[w]hen the synthetic fiber is in the continuous filament form, the resulting fabric is essentially non-linting. When the synthetic fiber is in the non-continuous staple form, the fabric will lint to a limited extent but the amount of lint will be substantially less than that obtained by the corresponding cotton fabric."* (emphasis added; col. 1 lines 22-25; col. 2 lines 49-65); and, d) Fujiwara et al in discussing a related prior art discloses that, non-woven webs which are derived from spun-bonded long fibers have a *"higher tenacity and are relatively cheap as compared with short fiber non-woven fabric"* and further teaches that, a short fiber non-woven web has another drawback, because short fibers are *"readily broken when used as a surface material of absorptive articles"* (col. 1 lines 33-65).

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With respect to claim 4, it is old in the art of making an absorbent web comprising a covering web having polypropylene blend filaments. For this reason, this claim would have been obvious in the art.

8. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references set forth in numbered paragraph 7 as applied to claim 1 above, and further in view of Brock et al (US 4,041,203) and Abed et al (US 2002/0148547 A1).

With respect to claim 6, while Storey teaches using a pair of embossing rolls where *"one of which is engraved with a bonding pattern"*, Storey et al is silent on the relative temperatures between an engraved roll and a smooth roll (i.e. the temperature of engraved roll is greater than the temperature of a smooth roll). However, such would have been obvious in the art, because it is old in the art to emboss an absorbent three-layered fibrous web using a pair of embossing rolls, where a temperature of an engraved roll is higher than a temperature of a smooth roll, and wherein different polymers can be used in preparing layers in the web as exemplified in the teachings of Brock et al (abstract; col. 1 lines 24-39; col. 3 lines 3-38; col. 4 lines 9-42; example IV table, in particular, see the temperature of rolls 42 and 44); and, Abed et al discloses the advantage of using a pair of embossing rolls, where the temperature of engraved roll is higher than a temperature of an anvil (i.e. smooth) roll, for constructing a three-layered fiber web (abstract; numbered paragraphs 3-5,8, 12-19).

With respect to claim 7, Abed et al teaches the desirability of using polyethylene fibers in forming a fabric, when it is used where it comes in contact with human

skin. However, Abed et al noted that, polyethylene fibers present processing difficulties since the polyethylene fibers tend to stick to heated calender rolls and they have a narrow working temperature (numbered paragraph 3). To address this problem, Abed et al suggests forming a multi-layered fiber web by embossing a plurality of fibrous web layers using a pair of embossing rolls, where a higher temperature engraved roll is used to press against a 1st polypropylene web layer, while a lower temperature anvil roll is used to press against the 2nd core/sheath fiber web layer; wherein a polypropylene is used for the core and a polyethylene for the sheath (numbered paragraphs 3-5,8, and 12-19). It would have been obvious in the art to position the plurality of fiber webs in a modified process of Storey et al such that a covering polyethylene fiber web layer is positioned so that it contact against a lower temperature anvil roll to prevent the web from sticking onto a heated roll while achieving the desired tactile characteristics (i.e. softness).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on (571) 272-1156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
09-27-05